

State Board of Equalization

OPERATIONS MEMO

For Public Release

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SUBJECT: Written Tax Advice – Revenue and Taxation Code Section 6596 Guidelines

I. BACKGROUND

Revenue and Taxation Code (RTC) section 6596 provides authority for the Board of Equalization (BOE) to relieve taxpayers of tax, interest, and penalty where the BOE finds that the failure to make a timely return or payment was due to the taxpayer's reasonable reliance on written advice from the BOE. When providing written tax advice, Property and Special Taxes Department (PSTD) staff should cite the comparable statute for the tax or fee program for which they are providing written information. PSTD disclaimer language should be the same as the examples contained within this Operations Memo. However, the disclaimer must include reference to the comparable statute (please see Chapter 1, Exhibit 2 of the Compliance Policy and Procedure Manual for a listing of comparable statutes).

In general, claims of reliance on erroneous advice are ruled upon by the Board Members (Board). On September 30, 1992, the Board approved a Statement of Action delegating to the Sales and Use Tax Department (SUTD) Deputy Director the authority to relieve taxpayers of tax, interest and penalty as provided by RTC section 6596. The SUTD Deputy Director's authority to grant RTC section 6596 relief is limited to cases where the district office and the taxpayer are in full agreement that RTC section 6596 relief applies. The PSTD's Deputy Director is *currently not delegated* this authority. Therefore, such requests for PSTD accounts must be submitted to the Board for approval.

This Operations Memo contains new RTC section 6596 disclaimer language to be included in written advice prepared by BOE staff and clarification of existing policies regarding written tax advice prepared by BOE staff. The procedures containing the proper format for taxpayer correspondence, written advice provided in a prior audit, rescission of erroneous advice, and the procedures for requesting relief are discussed in Audit Manual section 0101.70, sections 0105.00 through 0105.10, and Compliance Policy and Procedures Manual section 120.030 and sections 150.025 through 150.040. Please refer to the appropriate manuals for information regarding written tax advice that is not identified in this Operations Memo.

II. GENERAL CORRESPONDENCE

The BOE receives and responds to numerous taxpayer inquiries received via letter and email. Responses prepared by BOE staff to email inquiries, whether sent by email or by letter, qualify as written tax advice. Therefore, written responses to taxpayer inquiries via email or letter should contain the appropriate section 6596 disclaimer language (see section III below).

III. WRITTEN TAX ADVICE

Written advice by the BOE to a taxpayer in response to a taxpayer's specific written inquiry or from the taxpayer's representative seeking a written opinion will constitute written advice that

can be relied upon for relief in accordance with RTC section 6596. To be considered a specific written inquiry, the taxpayer or the taxpayer's representative must identify the specific taxpayer (business) for whom the advice is requested. Such an inquiry must also fully describe the specific facts and circumstances of the activity or transactions for which the advice was requested.

In responding to accountants, attorneys, or other taxpayer's representatives where the name of the taxpayer is not divulged, BOE staff should ask that the representative divulge the name and account number of the taxpayer in order for the BOE to provide a response that may be relied upon and also to maintain appropriate records with respect to the information provided. The taxpayer's name and account number will be referenced in the BOE's response.

Tax advice to trade/industry associations or franchisors that do not identify their members, taxpayer's representatives failing to identify their clients, and/or taxpayers whose questions are vague or general in nature must include the following statement:

The answer given is intended to provide general information regarding the application of the tax and will not serve as a basis for relief of liability under Revenue and Taxation Code section 6596.

Written advice may only be relied upon by the taxpayer to which it was originally issued or a legal or statutory successor to that taxpayer. The taxpayer's suppliers, customers, or other business associates are not protected under RTC section 6596 by the written advice to the taxpayer. Written advice that may serve for relief under RTC section 6596 must include the following statement:

Provided the facts discussed below are accurate and verifiable by audit, (state taxpayer's name) may rely on this response for purposes of Revenue and Taxation Code (RTC) section 6596. If you provide this letter to your customers or vendors, those customers or vendors must write to the Board of Equalization (BOE) and obtain their own written opinion in order for them to qualify for relief under RTC section 6596. Any person seeking relief under this section will be required to furnish a copy of such person's own original written inquiry to the BOE along with a copy of the written response received from the BOE.

If individual taxpayers are identified, but background information is incomplete, staff should make reasonable efforts to obtain additional facts. If staff is unable to obtain the additional facts from the taxpayer, the written response should contain clearly identified assumptions. When the assumptions made by staff are consistent with the facts of the transaction(s) in question, the written tax advice may serve for relief under RTC section 6596. Written advice to taxpayers that include staff's assumptions must include the following statement:

Before discussing your questions in more detail below, please note the facts you provided are not sufficiently complete. Therefore, assumptions have been made in this letter to answer your questions. If the actual facts differ from the facts summarized in this letter, or if any of the assumptions made are incorrect, the opinion expressed in this letter will not qualify for relief under Revenue and Taxation Code (RTC) section 6596. Provided both the summarized and assumed facts of this letter are accurate and verifiable by audit, (state taxpayer's name) may rely on this response for purposes of RTC section 6596.

Written tax advice prepared by BOE staff, including email responses, must include one of the above statements regarding relief under RTC section 6596 if the written tax advice indicates any part of the transaction is exempt from tax. Written tax advice indicating the transaction is subject to tax, rather than exempt from tax, need not include any of the above statements regarding relief under RTC section 6596.

IV. REVIEW - WRITTEN TAX ADVICE

SUTD District Administrators and Headquarters Section Supervisors must maintain a log of the number of written inquiries received and responded to. A monthly report, along with copies of all written responses confirming transactions of an exempt nature, modification/rescission letters, and the taxpayer's original written inquiry will be forwarded to the Audit and Information Section (MIC 44) for final review of the accuracy of the written response. Any written responses requiring adjustment will be returned to the originating party. Correspondence that advises a transaction is taxable should *not* be forwarded to the Audit and Information Section. All written responses, regardless of whether or not the written tax advice provides that the transactions are exempt or subject to tax, should be filed in accordance with existing policy.

PSTD Division Chiefs are responsible for maintaining a file of all original written requests received regarding transactions/activities of an exempt nature. They are also responsible for ensuring all written responses are accurate. Additionally, all outgoing written responses confirming exemptions, along with any subsequent modifications/rescissions should be maintained in the file as well.

V. OBSOLESCENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.

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Distribution: 1-D